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United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court

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ORGANIZATION OF WORK

Memorandum of the Secretary-General on the methods of work and procedures for the Conference

1. The present memorandum on the methods of work and procedures of the Conference has been prepared in accordance with General Assembly resolution 52/160 of 15 December 1997, entitled "Establishment of an international criminal court". (The text of the resolution is contained in the annex to this memorandum.)

I. PROVISIONAL AGENDA FOR THE CONFERENCE

2. The provisional agenda for the Conference, which has been prepared by the Secretariat, is set out in document A/CONF.183/1.

3. Items 1 to 10 of the provisional agenda concern matters relating to the organization of the Conference. Item 11 concerns the substantive work of the Conference. Item 12 concerns the adoption of a convention and other instruments deemed appropriate and of the final act of the Conference. Item 13 concerns the signature of the final act and of the convention.

II. DRAFT RULES OF PROCEDURE

4. The General Assembly, in paragraph 4 of its resolution 52/160, requested the Secretary-General to prepare the text of the draft rules of procedure of the Conference, to be submitted to the Preparatory Committee on the establishment of an International Criminal Court for its consideration and recommendation to the Conference, with a view to the adoption of such rules by the Conference in accordance with the rules of procedure of the General Assembly, and to provide for consultations on the organization and methods of work of the Conference, including the rules of procedure, prior to the convening of the last session of the Preparatory Committee. The Secretariat prepared the draft rules of procedure, which were considered during consultations held prior to the last session of the Preparatory Committee and by the Preparatory Committee at its

session from 6 March to 3 April 1998. The Preparatory Committee adopted for recommendation to the Conference the draft rules of procedure, as orally amended.

5. The draft rules of procedure are contained in document A/CONF.183/2/Add.2.

III. OFFICERS

6. According to rule 6 of the draft rules of procedure, the Conference shall elect from among the representatives of participating States the following officers: a President and [22] Vice-Presidents, as well as the Chairman of the Committee of the Whole and the Chairman of the Drafting Committee. These officers shall be elected on the basis of ensuring the representative character of the General Committee, taking into account in particular equitable geographical distribution and bearing in mind the adequate representation of the principal legal systems of the world. The Conference may also elect such other officers as it deems necessary for the performance of its functions.

IV. COMMITTEES OF THE CONFERENCE

7. The draft rules of procedure provide for the establishment of a Credentials Committee, a General Committee, a Committee of the Whole, and a Drafting Committee.

8. Credentials Committee. The draft rules of procedure provide in rule 4 for the establishment at the beginning of the Conference of a Credentials Committee consisting of nine members from among the representatives of participating States to be appointed by the Conference on the proposal of the President. The rule also provides that the Credentials Committee shall examine the credentials of representatives of States and report to the Conference without delay.

9. General Committee. The draft rules of procedure provide in rule 11 for the establishment of a General Committee, comprising the President and Vice-Presidents of the Conference, the Chairman of the Committee of the Whole and the Chairman of the Drafting Committee. The draft rules of procedure provide in rule 13 that the General Committee shall assist the President in the general conduct of the business of the Conference and, subject to the decisions of the Conference, shall ensure the coordination of its work. The draft rule also provides that the General Committee shall exercise the powers conferred on it by rule 34, dealing with the promotion of general agreement.

10. Committee of the Whole. The draft rules of procedure provide in rule 48 for the establishment of a Committee of the Whole. The rule provides that the Committee of the Whole shall have as its officers a Chairman, three Vice-Chairmen and a Rapporteur. The Committee may set up working groups pursuant to rule 50.

11. Drafting Committee. The draft rules of procedure provide in rule 49 for the establishment of a Drafting Committee consisting of [21] members, including its Chairman. The rule provides that the Chairman is to be elected by the

Conference in accordance with rule 6 and the other members are to be appointed by the Conference on the proposal of the General Committee, taking into account equitable geographical distribution as well as the need to ensure the representation of the languages of the Conference and to enable the Drafting Committee to fulfil its functions. The Rapporteur of the Committee of the Whole participates ex officio, without a vote, in the work of the Drafting Committee.

12. Pursuant to draft rule 49, the Drafting Committee shall, without reopening substantive discussion on any matter, coordinate and refine the drafting of all texts referred to it, without altering their substance, formulate drafts and give advice on drafting as requested by the Conference or by the Committee of the Whole and report to the Conference or to the Committee of the Whole as appropriate.

V. SECRETARIAT

13. The Secretary-General has designated the Legal Counsel, Mr. Hans Corell, as his representative at the Conference and has appointed the Director of the Codification Division of the Office of Legal Affairs, Mr. Roy S. Lee, as Executive Secretary of the Conference.

14. The specific duties of the secretariat are set out in rule 15 of the draft rules of procedure. Rule 16 provides that in the exercise of their duties the Secretary-General or any other member of the staff of the secretariat designated for that purpose may, at any time, make oral or written statements concerning any question under consideration.

VI. PROPOSALS

15. The General Assembly, in paragraph 2 of its resolution 52/160, requested the Preparatory Committee to transmit to the Conference the text of a draft convention on the establishment of an international criminal court prepared in accordance with its mandate. Rule 29 provides that this draft convention shall constitute the basic proposal for consideration by the Conference.

16. The draft statute for the establishment of an international criminal court, together with the draft final act prepared by the Preparatory Committee, consists of 116 articles and is set out in document A/CONF.183/2/Add.1.

17. According to rule 30 of the draft rules of procedure, other proposals shall normally be submitted in writing to the Executive Secretary of the Conference, who shall circulate copies to all delegations.

VII. GENERAL AGREEMENT AND DECISION-TAKING

18. In its resolution 52/160, the General Assembly recognized the importance of concluding the work of the Conference through the promotion of general agreement on matters of substance. The draft rules of procedure provide in rule 34 that the Conference shall make its best endeavours to ensure that the work of the

Conference is accomplished by general agreement. The rule further provides that if, in the consideration of any matter of substance, all feasible efforts to reach general agreement have failed, the President of the Conference shall consult the General Committee and recommend the steps to be taken, which may include the matter being put to a vote.

19. Similar provision is made in rule 52 (d), which is in square brackets, regarding the work of the Committee of the Whole.

20. The draft rules of procedure provide in rule 35 that each State participating in the Conference shall have one vote.

21. Rule 36, which is in square brackets, deals with the question of the majority required in any vote which may be taken in the Conference. Rule 52 (e), which is also in square brackets, deals with the same question insofar as the subsidiary bodies of the Conference are concerned.

VIII. MEETINGS OF THE CONFERENCE

22. Meetings of the organs of the Conference for which interpretation is required will normally be held from 10 a.m. to 1 p.m. and from 3 p.m. to 6 p.m. from Monday to Friday. The facilities with full interpretation services available to the Conference are: two meetings (morning and afternoon) on the first day, four meetings (morning and afternoon) on the second day (16 June) and six meetings per day (morning and afternoon) from the third day (17 June) to the end of the Conference. Thus, from 17 June, three concurrent meetings may be held each day in the morning and three in the afternoon.

IX. SCHEDULE OF WORK

23. The Conference is convened for the period from Monday, 15 June to Friday, 17 July 1998 to finalize and adopt a convention on the establishment of an international criminal court. The Conference should move promptly to the consideration of substantive matters after a short meeting on organizational matters. A draft organization of work for the Conference (A/CONF.183/2, part four) is proposed by the Preparatory Committee for the consideration of the Conference.

24. In view of the number of draft articles to be considered and the limited time available to the Conference, general statements should be made only in the plenary and only over the course of seven meetings in the first week. The draft statute, together with the draft final act and its annex transmitted by the Preparatory Committee (A/CONF.183/2/Add.1), should be as a whole referred directly to the Committee of the Whole. There should be no general debate in the Committee of the Whole and its work on the draft statute should begin as soon as possible.

25. The Conference, at its first plenary meeting, on the morning of 15 June 1998, may be expected to deal with at least items 1 to 4 of the provisional agenda (Opening of the Conference by the Secretary-General; Election

of the President; Adoption of the agenda; and Adoption of the rules of procedure).

26. At its second plenary meeting, in the afternoon of 15 June 1998, the Conference may be expected to deal with items 5 to 10 of the provisional agenda (Election of Vice-Presidents; Election of the Chairman of the Committee of the Whole; Election of the Chairman of the Drafting Committee; Appointment of the Credentials Committee; Appointment of the other members of the Drafting Committee; and Organization of work).

27. It is envisaged that the Conference will meet in plenary in the final week of the Conference to take such action as may be necessary under items 11 to 13 of the provisional agenda, including: consideration of the report of the Committee of the Whole and those parts of the report of the Drafting Committee which may need to be submitted directly to the Conference (see para. 31 below).

28. The Credentials Committee is expected to meet sometime during the second or third week of the Conference. One meeting has been allotted for this purpose. It should be noted that rule 5 of the draft rules of procedure provides that, pending a decision of the Conference, representatives shall be entitled to participate provisionally in the Conference.

29. The General Committee is expected to hold its first meeting in the afternoon of Monday, 15 June 1998 immediately before the second plenary meeting.

30. The Committee of the Whole is expected to hold its first meeting on Tuesday, 16 June 1998 and to establish its own work programme, with a view to finalizing its work within the number of meetings available to it. The Committee, including any working group or working groups it may establish under rule 50, may hold up to four meetings (with full interpretation) per day throughout the Conference, that is, two bodies may meet concurrently, both in the morning and in the afternoon. The Committee of the Whole should report to the plenary as soon as its work is completed, which should in any event be not later than 10 July.

31. The Drafting Committee is expected to hold its first meeting on 19 June 1998. Two meetings per day (with full interpretation) may be allotted to it throughout the Conference. The Drafting Committee will receive its work from the Committee of the Whole and report to it. Time constraints may make it necessary for the Drafting Committee to report on the last portion of its work directly to the plenary.

ANNEX

General Assembly resolution 52/160 of 15 December 1997

Establishment of an international criminal court

The General Assembly,

Recalling its resolutions 47/33 of 25 November 1992, 48/31 of 9 December 1993, 49/53 of 9 December 1994 and 50/46 of 11 December 1995,

Considering that, in its resolution 51/207 of 17 December 1996, it decided to reaffirm the mandate of the Preparatory Committee on the Establishment of an International Criminal Court and decided also that the Preparatory Committee should meet from 11 to 21 February, 4 to 15 August and 1 to 12 December 1997, and from 16 March to 3 April 1998, in order to complete the drafting of a widely acceptable consolidated text of a convention, to be submitted to a diplomatic conference of plenipotentiaries,

Recalling that, in its resolution 51/207, it further decided that a diplomatic conference of plenipotentiaries should be held in 1998, with a view to finalizing and adopting a convention on the establishment of an international criminal court,

Recognizing the importance of concluding the work of the conference through the promotion of general agreement on matters of substance,

Noting that, at its fifty-first meeting, on 21 February 1997, the Preparatory Committee welcomed the offer by the Government of Italy to hold the conference at Rome and recommended to the General Assembly that, pursuant to Assembly resolution 51/207 and after consideration by the Committee on Conferences, a decision in accordance with the offer should be made when dealing with the necessary arrangements for the conference, on the understanding that the organization of the conference at Rome would proceed on the basis of the usual practice concerning the funding of such events taking place away from United Nations Headquarters or other United Nations offices,[1]

Taking note of the report of the Committee on Conferences,[2] in which the Committee recommended to the General Assembly that it should adopt the draft biennial calendar of conferences and meetings for 1998-1999 contained in the report,

Welcoming the steps taken, and the suggestions made, by the Government of Italy following its offer to host the conference in June 1998, including the proposal to hold the conference during the period from 15 June to 17 July 1998

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[1] See A/AC.249/1997/L.5, annex III.

[2] A/52/32 and Add.1-3. For the final text, see Official Records of the General Assembly, Fifty-second Session, Supplement No. 32.

at the headquarters of the Food and Agriculture Organization of the United Nations at Rome,

1. Accepts with deep appreciation the generous offer of the Government of Italy to act as host to the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court;

2. Requests the Preparatory Committee on the Establishment of an International Criminal Court to continue its work in accordance with General Assembly resolution 51/207 and, at the end of its sessions, to transmit to the Conference the text of a draft convention on the establishment of an international criminal court prepared in accordance with its mandate;

3. Decides that the Conference, open to all States Members of the United Nations or members of specialized agencies or of the International Atomic Energy Agency, shall be held at Rome from 15 June to 17 July 1998, with a view to finalizing and adopting a convention on the establishment of an international criminal court, and requests the Secretary-General to invite those States to the Conference;

4. Requests the Secretary-General to prepare the text of the draft rules of procedure of the Conference, to be submitted to the Preparatory Committee for its consideration and for recommendations to the Conference, with a view to the adoption of such rules by the Conference in accordance with the rules of procedure of the General Assembly, and to provide for consultations on the organization and methods of work of the Conference, including rules of procedure, prior to the convening of the last session of the Preparatory Committee;

5. Urges participation in the Conference by the largest number of States so as to promote universal support for an international criminal court;

6. Notes with appreciation the establishment by the Secretary-General, pursuant to resolution 51/207, of a trust fund for the participation of the least developed countries in the work of the Preparatory Committee and in the Conference, welcomes the decision by a number of States to make contributions to the trust fund, and encourages States to contribute voluntarily to it;

7. Requests the Secretary-General to establish a trust fund for voluntary contributions towards meeting the cost of participation in the work of the Preparatory Committee and the Conference of those developing countries not covered by the trust fund referred to in paragraph 6 above, and invites States to contribute voluntarily to this trust fund;

8. Also requests the Secretary-General to invite to the Conference representatives of organizations and other entities that have received a standing invitation from the General Assembly pursuant to its relevant

resolutions[3] to participate, in the capacity of observers, in its sessions and work, on the understanding that such representatives would participate in the Conference in that capacity, and to invite, as observers to the Conference, representatives of interested regional intergovernmental organizations and other interested international bodies, including the international tribunals for the former Yugoslavia and for Rwanda;

9. Further requests the Secretary-General to invite non-governmental organizations, accredited by the Preparatory Committee with due regard to the provisions of part VII of Economic and Social Council resolution 1996/31 of 25 July 1996, and in particular to the relevance of their activities to the work of the Conference, to participate in the Conference, along the lines followed in the Preparatory Committee, on the understanding that participation means attending meetings of its plenary and, unless otherwise decided by the Conference in specific situations, formal meetings of its subsidiary bodies except the drafting group, receiving copies of the official documents, making available their materials to delegates and addressing, through a limited number of their representatives, its opening and/or closing sessions, as appropriate, in accordance with the rules of procedure to be adopted by the Conference;

10. Decides to include in the provisional agenda of its fifty-third session the item entitled "Establishment of an international criminal court".

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[3] Resolutions 253 (III), 477 (V), 2011 (XX), 3208 (XXIX), 3237 (XXIX), 3369 (XXX), 31/3, 33/18, 35/2, 35/3, 36/4, 42/10, 43/6, 44/6, 45/6, 46/8, 47/4, 48/2, 48/3, 48/4, 48/5, 48/237, 48/265, 49/1, 49/2, 50/2, 51/1, 51/6, 51/204 and 52/6.